S.B. CIVIL WRIT PETITION NO.5415/2004
(Magha Ram Vs. Smt. Chota Bai & Ors.)

Date of order : 9.4.2007

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. P.K. Bhansali, for the petitioner.
Mr. P.S. Bhati, for the respondents.

Heard learned counsel for the parties.

By way of filing the present writ petition, the petitioner is challenging the order dated 20.7.2004 passed by Civil Judge (Junior Division), Jodhpur City, Jodhpur in Civil Suit No.964/1982 whereby the application filed by the petitioner under Section 151, Code of Civil Procedure was rejected.

According to the facts of the case, the plaintiff-respondent Smt. Chota Bai preferred a suit in the year 1982. The defendant-petitioner filed his written statements. Issues were framed by the trial court and statement of Chota Bai was recorded as PW-1. In the year 1989, an application was filed by the plaintiff-respondent No.1 – Chota Bai under Order 13 Rule 1 and 2 read with Section 151, Code of Civil Procedure. The said application was allowed by the learned trial court. Thereafter, another application under Order 26 Rule 9, Code of Civil Procedure was filed by the plaintiff-respondent No.1 for appointment

of Commissioner. The said application was allowed and Commissioner was appointed for 'patta' setting of disputed plot. Thereafter, on 12.7.1994, said Chota Bai expired. After the death of Chota Bai, her legal representatives were brought on record. On 17.10.1997, the case was fixed for plaintiff's further evidence. An objection was raised on behalf of the defendant-petitioner that Amar Singh, who is one of the legal representatives of Chota Bai cannot be examined. The said objection was rejected, against which SB Civil Revision Petition No.199/1999 was preferred by the defendant-petitioner before this Court. The said revision petition was allowed by this Court vide order dated 2.7.1999. The conclusive paragraph of the order dated 2.7.1999 reads as follows:

> "Consequently, the revision petition is allowed and the order of trail Judge dated 20.1.1999 is set aside to the extent of recording statement of legal representatives."

Thereafter, after passing of the aforesaid order, the statements of other legal representatives of plaintiff-respondent No.1 Chota Bai were recorded. Thereafter, an application under Order 13 Rule 2, Code of Civil Procedure was filed by the defendant-petitioner. The statement of plaintiff-respondent No.1/1 - Amar Singh was recorded. Thereafter, an application under Section 151, Code of Civil Procedure was filed by the defendant-petitioner, whereupon the

impugned order dated 20.7.2004 was passed by the trial court.

The main contention of the learned counsel for the petitioner is that the learned trial court while passing the impugned order has committed illegality and material irregularity in not properly appreciating the fact that Amar Singh, who has stepped in the shoes of deceased plaintiff – Chota Bai, as plaintiff cannot now be examined as a witness in rebuttal as there are no issues on which rebuttal evidence was to be produced by the respondent No.1 – plaintiff but after the evidence of defendant-petitioner was completed, therefore, in these circumstances, the learned trial Court has erred in law and facts of the case while coming to the conclusion that because the case is fixed for rebuttal evidence, therefore, the plaintiff-respondent No.1/1 Amar Singh can be produced as a witness. It is further contended by the learned counsel for the petitioner that upon perusal of the order-sheet dated 23.11.2002 passed by learned trial court, it is clear that the Court has allowed the plaintiff-respondent No.1 to produce the rebuttal evidence only in respect of documents which have been filed on 17.9.2002. Therefore, in these circumstances, the order dated 20.7.2004 passed by the learned trial court is totally against the order dated 23.11.2002. Therefore, the impugned order deserves to be quashed. It is prayed

that the learned trial court may be directed to restrict the production of rebuttal evidence by the plaintiff-respondent No.1 to the extent of documents taken on record and as per orders passed by trial court on 4.5.2002 and 23.11.2002. It is further prayed that the learned trial court has committed error while recording the evidence of Amar Singh as plaintiff-respondent No.1/1 as witness in rebuttal.

Per contra, learned counsel for the respondents contended that a bare perusal of the order impugned dated 20.7.2004 reveals that the learned trial court has only recorded the statement of plaintiff-respondent No.1/1 Amar Singh to the extent of rebuttal of those documents which were taken on record as per order dated 4.5.2002 and 23.11.2002. Therefore, the apprehension of the petitioner is totally unfounded and has no foundation to stand. Learned counsel for the respondents has invited the attention of this Court towards page No.2 of the impugned order dated 20.7.2004 wherein it has been specifically ordered as follows :

> "अत: अधिवक्ता प्रतिवादी का यह कथन उचित नहीं है कि उक्त साक्षी को रिबटल साक्ष्य में प्रस्तुत नही किया जा सकता । जहां तक आदेश – 13 नियम – 2 व्यवहार प्रक्रिया संहिता के प्रार्थना पत्र के साथ संलग्न प्रलेखों के संबंध में साक्ष्य दिये जाने का निर्देश है, तो वादीनी की ओर से प्रस्तुत साक्षी अमरसिहं ने अपनी साक्ष्य प्रदर्श डी-२ व प्रदर्श डी-३ के रिबटल में ही प्रस्तुत की है प्रदर्श डी-२ व प्रदर्श डी-३ की रिबटल साक्ष्य प्रस्तुत करने का वादी को न्यायालय द्वारा दिनांक 4/5/2002 द्वारा आदेश दिया गया था । प्रदर्श डी-२ व प्रदर्श डी-३ यू.आई.टी.

द्वारा जारी किया गया है व जिसमें विवादित जायदाद की सीमाएं भी अंकित है तथा साक्षी अमरसिंह द्वारा इस सम्बन्ध में ही साक्ष्य प्रस्तुत की गई है जो कि उसके द्वारा रिबटल साक्ष्य में प्रस्तुत की जा सकती है ।

A bare perusal of the above order reveals that the learned trial court has only passed an order with regard to the extent of documents taken on record in rebuttal as per the earlier order passed on 4.5.2002. In this view of the matter, no interference is warranted in the impugned order because the said order has been passed by the learned trial court in consonance with the earlier order dated 4.5.2002 as observed by he learned trial court in the impugned order.

In the circumstances, I find no force in the writ petition. Accordingly, the writ petition is dismissed. Record of the case may be sent back immediately.

(GOPAL KRISHAN VYAS), J.

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